

**Report on Implementation of International Convention on the Elimination of All Forms  
of Racial Discrimination by the Republic of Belarus  
Prepared by Civil Society Organizations**

Committee on the Elimination of All Forms of Racial Discrimination, Session 94

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## **INTRODUCTION**

This report presents the position of the civil society organizations on the certain provisions of the Convention on the Elimination of All Forms of Racial Discrimination (the Convention) that trigger their concern. The report does not provide a comprehensive coverage of all aspects of the fulfilment of the country's obligations on the elimination of racial discrimination.

The report lists both the positive aspects of the measures taken by Belarus to implement the Convention, and the negative practices. Besides, the report also suggests recommendations to the State. The Committee should consider them in their Concluding Observations adopted upon the consideration of the report submitted by Belarus.

### **National Legislation to Prevent Discrimination**

1. Despite the recommendations adopted by the Committee upon the consideration of the previous report, to date, Belarus has failed to include the definition of racial discrimination complying with Article 1 of the Convention into the national legislation. This impedes amending the criminal and administrative legislation so that to criminalize all forms of racial discrimination, including direct and indirect discrimination.
2. Belarus lacks effective legal mechanisms to ensure the equality and protection against discrimination. The Belarusian legislation includes only general provisions on the principles of equality and non-discrimination, which fail to provide for effective implementation measures. These provisions cannot substitute a comprehensive anti-discrimination law. It will be very difficult to implement the principles of equality and non-discrimination in Belarus without the adoption of the specific legislation.
3. Although Article 14 of the Labour Code was amended so that to expand the list of prohibited grounds for discrimination, the existing legislation still lacks a general definition of indirect discrimination and definitions of the important terms, widely recognized in the other European jurisdictions in the context of the right to equality, such as "harassment", "reasonable accommodation" or "victimization". The legislation fails to distinguish between direct and indirect discrimination and, consequently, to differentiate between responsibility for different types of discrimination.
4. There is no practice there of applying directly provisions of the international treaties in the Belarusian courts, although the national legislation provides for this possibility.
5. Belarus has no anti-discrimination case law. In rare cases, the problem of discrimination has become a case at law (the cases did not fall within the scope of the Convention), but there is no information there about any cases where the courts would have found discrimination.
6. There are no special rules there to regulate the consideration of cases on discrimination in courts, similar to those that have been developed in the recent years in the other European jurisdictions (e.g., placing the burden of proof on the defendant). As a rule, the burden of proof lies equally with all the trial parties. According to Article 179 of the Civil Procedure Code, every party proves the facts on which it relies as on the basis for its claim or objections. In practice, this results in the need for the victim of discrimination to justify their claim and to provide evidence of the violation of the right to equality. In one of the judgements, the judge

expressly stated that the plaintiff had failed to prove the defendant's discriminatory behaviour during the employment interview.<sup>1</sup>

7. Victims of discrimination have no possibilities to contact the authorities specializing in the protection of human rights or in the protection against discrimination. There is no access there to special simplified procedures for resolving of conflicts related to discrimination. Neither has the country yet established the institute of the Human Rights Commissioner (the Ombudsman), who could verify allegations of discrimination and systematically collect information about the implementation of the principles of equality and non-discrimination in Belarus in practice.
8. We should recognise as a positive aspect the approval of the Inter-Ministerial Plan aiming to implement the recommendations adopted by Belarus as part of the second cycle of the Universal Periodic Review, as well as those formulated for Belarus by the human rights treaty bodies (the so-called National Human Rights Plan). As one of the steps, the Plan includes "the analysis of the legislation in terms of the need to include legal provisions prohibiting discrimination on any grounds, and the reasonability of the preparation of a comprehensive anti-discrimination law". This activity is scheduled for 2017-2019, which means that there are no grounds there to expect the adoption of the special anti-discrimination legislation within this period.
9. It is important to note that a number of the UN treaty bodies made recommendations on the need for Belarus to adopt comprehensive anti-discrimination legislation; this was also recommended upon the second cycle of the Universal Periodic Review.
10. In their Concluding Observations on Belarus' report of 2013, the Committee on the Elimination of Racial Discrimination (CERD) expressed their concern about the extremely broad interpretation of the Law on Extremism. In this regard, we should note that Belarus has taken no measures to clarify the provisions of the Law on Extremism, including the definition of extremism, which is still interpreted very broadly, despite the new wording. In addition, Law #358-3 of 20 April 2016 added new Article 361-1 to the Criminal Code of Belarus, which criminalizes creating or leading an extremist group. The article provides for seven years of imprisonment as the maximal punishment for these actions. The absence of clear criteria and the broad definition of extremism makes it possible to apply this article of the Criminal Code arbitrarily, which raises concerns.
11. Belarus' report notes that the Law on National Minorities provides for a number of rights and guarantees for national minorities. However, a drawback of this law is that it establishes a mechanism for the implementation of the rights of and guarantees for national minorities only in the most general terms.
12. According to Article 1 of the Law on National Minorities, the term "national minorities" implies persons who permanently reside in Belarus and are citizens of Belarus, and whose language, culture and traditions differ from the bulk of the population. Thus, the permanent residence and the citizenship are the essential criteria for the inclusion of a community or a person into a national minority and, accordingly, for the implementation of the rights and guarantees

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<sup>1</sup> Equal Rights Trust Country Report Series: 3 [http://www.equalrightstrust.org/ertdocumentbank/ch%203\\_rus.pdf](http://www.equalrightstrust.org/ertdocumentbank/ch%203_rus.pdf), p. 256

provided to them. In this sense, the wording of the national law is restrictive, and the information provided in paragraphs 11 and 12 of the State Report is incomplete.

13. Besides, the wording of Article 12 of the Law on National Minorities is, in our view, problematic. It prohibits the establishment and activities of civic groups and associations of citizens who refer themselves to national minorities, if this contradicts the Law on Civic Associations and if these associations are institutionally linked to or are a part of a political organization of a foreign state. This article allows for a broad interpretation and, due to the lack of clear criteria, can be used as the reason for arbitrary decisions taken by the law enforcement agencies against national minorities' organizations.
14. The Belarusian legislation includes a number of provisions providing for liability for actions aiming to incite hatred or discord, including on ethnic grounds. Thus, Article 130, Section 1, of the Criminal Code of Belarus provides for liability for deliberate actions aiming to incite racial, national, religious or other social hatred or discord on racial, ethnic, religious, linguistic or other social grounds. Such actions are punishable by a fine or by arrest for up to six months or by restraint for up to five years, or by imprisonment for the same period.
15. Nevertheless, this article in the Criminal Code is not an effective deterrent to stop actions aiming to incite hatred or discord, including on ethnic grounds. The legislation fails to specify the actions aiming to incite hatred or to humiliate, provided for in Article 130 of the Criminal Code. To bring a person to justice under Article 130 of the Criminal Code, one needs to prove the offender's direct intent to incite racial, ethnic religious enmity or discord, or to humiliate ethnic honour and dignity, which is extremely difficult in practice.
16. The national legislation does not provide for direct administrative responsibility for the use of elements of hate speech, including racist expressions or actions that offend a person on racial grounds. Such actions may be punished under Article 9.3 of the Administrative Code (Insult, i.e. deliberate humiliation of a person's honour and dignity, expressed in indecent form). However, an offender may only be prosecuted under this article if they insulted the victim in an indecent manner. In addition, the case can only be initiated at the request of the victim.

## **Article 2. Measures taken in the social, economic, cultural and other fields to ensure the adequate development and protection of certain racial groups or individuals belonging to them**

17. The implementation of the joint Belarus-CE project to facilitate the implementation of the European Charter for Regional or Minority Languages in Belarus in 2016-2017 is commendable. The project implementers have established the National Contact Point and analysed the national legislation and law enforcement practice in terms of minority languages. The national and international experts joined their efforts to identify nine minority languages (Polish, Lithuanian, Ukrainian, Yiddish, Romani, Latvian, Estonian, Tatar, and German) traditional for Belarus. They also compiled a list of 45 points revealing the actual implementation of the Charter standards and held the relevant educational activities.
18. Paragraphs 36, 37, 38, 62 of the State Report contain information on the functioning of the Consultative Interethnic Council and the Consultative Interfaith Council, acting under the Commissioner for Religious and Ethnic Affairs. It is a matter of concern that the establishment of the Consultative Interethnic Council and the Consultative Interfaith Council is regulated by the departmental 'Regulation on the Commissioner for Religious and Ethnic Affairs and the

Apparatus', the decisions on the liquidation and reorganization of the Councils are taken by the Commissioner, and the Councils' decisions are recommendatory. There is also information there that the Consultative Interethnic Council does not involve representatives of the Belarusian Roma diaspora in their work and fails to consider the problems of the Roma population in Belarus, which contradicts paragraph 36 of the State Report.

19. Besides, the membership in the Consultative Interfaith Council is restricted: the Council may only include representatives of religious associations, while there are a large number of religious organizations in Belarus that do not form a religious association. This practice impedes the actual participation of representatives of ethnic and religious minorities in the discussion and decision-making process when important governmental decisions are taken to ensure the socio-economic and cultural development of these minorities.

**Article 4. Condemnation of propaganda and organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination**

20. At the legislative level, Belarus has banned the establishment and activities of civic associations aiming to promote extremism. This includes *inter alia* the propaganda of exclusivity, superiority or inferiority of persons on the grounds of their social, racial, ethnic, religious and linguistic identity.
21. However, it is a matter of concern that in practice, Article 130 of the Criminal Code (incitement to racial, ethnic, religious or other social hatred or discord) has been applied for political purposes (the cases of E. Palchis, S. Shiptenko, S. Pavlovets, and D. Alimkin).
22. The expert commissions, established in accordance with the Resolution of the Council of Ministers of Belarus of 21 July 2014, carry out much work to evaluate information products in terms of signs of extremism. For now, the National Commission has been established, as well as the relevant Regional Commissions.
23. These expert commissions review information products in terms of calls for extremist activity and (or) propaganda of such activities (propaganda elements). However, due to the lack of clear criteria in the Law on Extremism to define "signs of extremism", the Commissions have qualified a number of information products as extremist without sufficient and valid reasons.
24. There is little information there about the work of the Commissions; the available data suggest that many of the information products, provided by the government agencies (most often by the Customs Committee) for examination, contain signs of racial hate speech, racial discrimination, pro-fascist and anti-Semitic ideological propaganda. However, the results (reports, expert opinions, etc.) of the Commissions' work are inaccessible to the civil society.
25. The government bodies do not initiate a public discussion to prevent racist statements and discriminatory information materials.
26. Hate speech in the media, based on the racist ideas, remains a serious obstacle to social integration of the Roma population.

27. Contrary to the information in paragraph 179 of the State Report, there are examples of hate speech used against the Roma population in Belarus. Most often information materials of this kind are found at the information resources of the regional departments of the Ministry of Interior (MOI). Hate speech often targets the Roma women. When Roma are mentioned, the media often use words and phrases with negative connotation, which qualify as examples of hate speech (anti-Romanism). This behaviour strengthens the negative stereotypes in public opinion and promotes the negative image of the Roma ethnic group as a whole. The media often resort to wrongful generalizations mentioning the ethnicity in the criminal context, which may qualify as the use of logical means to promote anti-Romanism.

*On 4 May 2016, the Pukhovichi Executive Committee, Minsk region, posted an article from the Pukhavitskiya Naviny (Pukhovichi News) newspaper on their website. The article was titled “Old Lady in Pukhovichi Robbed by Gipsy Drug Dealers” and placed under the heading “Law and Order”.<sup>2</sup> “...It is not for nothing that the stereotype exists, ‘once you meet a Gipsy, you will be tricked’... The Gipsies will certainly give up attempts to steal something from you, if you are not alone in the house or apartment and if there is someone there who can stick up to them.”<sup>3</sup>*

## **Article 5. Measures to eliminate racial discrimination and guarantee rights**

### **The right to freedom of movement and residence within the border of the State**

28. The police systematically restrict the right to freedom of movement and residence within the border of the State for the Roma population through ethnic profiling. In 2014–2016, those cases were particularly frequent.
29. Essentially, ethnic profiling means arbitrary detentions and fingerprinting of Roma, or persons who have visual similarities to Roma (i.e. look similar in appearance, wear similar clothing), and who move within the country for their personal or business purposes.<sup>4</sup> The police officers explain these actions referring to the need for crime prevention and the “special Presidential Decree” or the order given by their superiors. In fact, those actions were based on internal document #56 issued by the Ministry of Interior “for official use only”, which was repealed in 2017.
30. The existence of documents of this kind raises extreme concern, as well as the possibility of further issuance of documents providing for ethnic profiling. In this regard, the information in paragraph 105 of the State Report is questionable (“the current legislation adequately protects all persons residing in Belarus from all forms of racial discrimination”).

*In 2015, the Belarusian Helsinki Committee received a written request from a group of Roma (over 30 people) with information about multiple insults and humiliation by the police, arbitrary detention, illegal temporary expropriation of property (vehicles), and compulsory fingerprinting. The Belarusian Helsinki Committee applied to the Ministry of Interior and General Prosecutor's Office with a request to check the legality of the*

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<sup>2</sup> <http://www.gorka.by/?p=31758#more-31758>

<sup>3</sup> <http://lenadm-mogilev.gov.by/pravo/newsrovd/8554-torgovalametadonom>

<sup>4</sup> <https://news.tut.by/society/477703.html>

*actions of the police officers and to take measures to eliminate discrimination of Roma. The above authorities did not find any violations reported in the requests. In February-August 2016, about 70 persons of the Roma ethnicity, including 50 women, applied to the Roma community mediators with complaints about such actions of the police officers. Some of them had been detained and fingerprinted repeatedly. The most frequent cases of arbitrary detention were registered in Minsk, near the railway station, where the police detained persons of the Roma ethnicity upon their arrival to Minsk by railway.*

31. The practice of arbitrary detention and compulsory fingerprinting forced Roma to abandon the movement outside their places of residence and (or) registration and made them fear the police officers.
32. In 2014-2016, repeated cases were registered when information materials (printed posters), promoting ethnic profiling, were placed in the public places (stores, village councils, etc.).

*For example, on 31 March 2016, the website of the Leninsky District Administration, Mogilev, posted the article "Prevention of Thefts from Elderly People Committed by Roma". "...It is necessary to mention that a large proportion of the crimes of this kind usually falls on the Roma diaspora. A group of 2-3 Roma commits these crimes... Most often the Roma women aged 25 to 55 pretend to be social workers".<sup>5</sup>The author of the article, Elena Simonova, the Chief Inspector of the Information and PR Group, suggests, "In case you see people of the Roma ethnicity in your town or village, try to remember and record the state registration number of their vehicles".*

33. Thus, the police officers actually spread the hostile stereotype of anti-Gypsyism among the population and contributed to the restriction of the freedom of movement for persons of the Roma ethnicity.

### **The right to citizenship**

34. A certain number of Roma, born in Belarus, are stateless and have a permanent residence permit. Persons of the Roma ethnicity, qualified as stateless persons, are obliged to have a permanent residence address. Moving in search of employment and suitable housing automatically entails the need for registration of the new temporary residence address. In case it is impossible to register such temporary residence address (due to the reluctance or the physical absence of the homeowners – the latter situation takes place when Roma occupy abandoned houses without the owners' permission), Roma are fined for the absence of registration.

*The most typical case of Anna Yu., who lives in the countryside in the Minsk region, illustrates this situation: On 24 July 2015, the Chaussy District Court defined the date and place of her birth - 22 October 1994, Belarus, Osipovich District, Mogilev Region. Before that, Anna did not have any documents, as her parents migrated and another Roma family brought up Anna. Anna had made unsuccessful attempts to obtain the citizenship of Belarus. The reference issued by the Soviet District Department of Interior, Gomel, on 15 January 2016, defined Anna Yu. as "a person who is not a citizen of the Republic of Belarus". It should be noted that at that time Anna Yu. had four children,*

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<sup>5</sup> <http://lenadm-mogilev.gov.by/pravo/newsrovd/9422>

*whose birth certificates were issued as late as in April 2017. The Pukhovichi District social services and child protection services provided assistance while obtaining the documents. The lack of a document “confirming the existence of a legitimate source of livelihood” was an obstacle for obtaining the Belarusian citizenship (according to the Regulation on Procedure for Consideration of Issues Related to Citizenship of Belarus, as amended by Presidential Decree #755 of 29 December 2006). Currently, Anna Yu. with her children, do not live at the permanent residence address. Their difficult financial situation is due to the impossibility of employment for Anna and the need for her to take care of her children. The fines payable make it impossible for her to apply for the citizenship of Belarus (she will only be able to apply one year after the payment of the fines). Anna’s story is a typical situation for Roma, born in Belarus, but owing no permanent housing and having no permanent residence registration for various reasons. Anna Yu. is a stateless person and she virtually has no sources of livelihood; she is unemployed; she has been fined by the migration service at her temporary residence address.*

35. Thus, information provided in Paragraph 77 of the State Report requires clarification, and the practice of granting the status of stateless persons to those born in Belarus, in particular to women and children, raises concern.<sup>6</sup>

### **The right to freedom of thought, conscience and religion**

36. Contrary to information provided in Paragraph 60 of the State Report, the Law on Freedom of Conscience and Religious Organizations, as amended in 2002, as well as provisions included in the Law on Mass Events, Administrative Code and Criminal Code after 2002 significantly restricted the freedom of religion and the possibilities for activities of religious organizations.
37. In particular, it is only possible to carry out religious activity after a religious community has obtained the state registration. A religious community may be formed by at least twenty citizens of Belarus aged 18 or older and permanently residing in one or several cities or villages with adjacent territories. The activity of the community will only be permitted within these territories.
38. Article 193-1 of the Criminal Code of Belarus provides for criminal responsibility for the organisation of or participation in the activities of a religious organization that has not been registered. This restriction is not conducive to the full implementation of the right to freedom of thought, conscience and religion of national or ethnic minorities. Moreover, it may be inconsistent with various religious canons of such minorities.
39. In addition, this article also provides for criminal liability for organizing of or participating in the activities of an unregistered civic association, a party or a foundation. The European Commission for Democracy through Law (Venice Commission) found in their special conclusion that this article violates the international standards for the freedom of association<sup>7</sup>. During the first (2010) and second (2015) rounds of the Universal Periodic Review on Human Rights,

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<sup>6</sup> See Resolution 20/4 of the Human Rights Council, “The right to a nationality: women and children”: <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/G12/153/06/PDF/G1215306.pdf?OpenElement>

<sup>7</sup> Opinion of the Commission for Democracy through Law (Venice Commission) No. 633/2011: [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2011\)036-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2011)036-e)

numerous recommendations were made for Belarus to repeal Article 193-1 of the Criminal Code (including by Belgium, the Czech Republic, France, Israel, the Netherlands, Poland; the Government of Belarus recognized some of those recommendations as acceptable). However, despite the numerous assurances made by various state bodies (in particular, by the Ministry of Foreign Affairs, the Prosecutor's Office, the Parliament and the Presidential Administration) about the possible amendments to the legislation banning activities of unregistered organizations, this article has never been repealed.

40. In accordance with the Law on Mass Events, holding religious events in the premises that do not have the status of a place of worship is only allowed upon the special permission.
41. The right of religious communities to spread religion through the establishment of their own media is restricted, as only religious associations may do this.
42. The Regulation of 2008 on the procedure for inviting foreign citizens and stateless persons to Belarus for religious activity provides for the right to invite foreign citizens to serve as priests in religious organisations only for religious associations. Contrary to information in Paragraph 21 of the State Report, a confirmation of the knowledge of Belarus' state languages to the extent necessary to carry out religious activities is a compulsory condition for the invitation of foreign citizens and stateless persons to Belarus with a view to engage them in religious activity. All of the above conditions for invitation of foreign clerics in fact limit the right of national or ethnic minorities to hold religious meetings in accordance with their traditions, including the use of their national language.
43. According to the National Statistics Committee of Belarus and the census of 2009, there are 22 thousand Muslims living in Belarus. In accordance with the legislation of Belarus, a citizen of Belarus willing to receive or replace the passport must provide photos, which depict the citizen without a hat. This regulatory act provides for no exceptions for individuals who cannot appear hatless in public because of their religious beliefs. This rule applies to all citizens of Belarus, but it disproportionately affects Muslim women who cannot appear in public without the traditional Muslim woman's headscarf in line with their religious beliefs. Therefore, Muslim women are forced to take off the handkerchief to make these photos, which causes emotional distress. This practice also makes it difficult to identify Muslim women who have been photographed without the headscarf for their passport, but do wear it in their daily life.

**The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work**

44. According to the research conducted in 2014, on average, about 30% of the Roma women aged 25-45 and about 20% of the Roma men in all age groups are officially employed.<sup>8</sup> The bulk of the Roma men and women are engaged in seasonal work; many of them are engaged in house-keeping, and about 5% provide magical services. A small number of the young Roma women

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<sup>8</sup> *See Strategy for education, professional employment, social welfare and preservation of the cultural identity of the Belarussian Roma population as a condition for overcoming the social exclusion and discrimination. Analytical materials.* <http://romaintegration.by/wp-content/uploads/2014/12/18.pdf>

are employed in the service sector (as hairdressers, nail techs); about 30% are engaged in trade, but in fact, this kind of self-employment is illegal.

45. The reasons for the lack of legal employment are as follows: 1) the lack of the necessary education and training; 2) the lack of access to training programs and motivation to study; 3) discrimination during the employment procedure in case suitable vacancies are available.
46. The information at page 178 of the State Report is incomplete, as it fails to reflect the real employers' practice in relation to Roma. According to information provided by the non-governmental Roma community mediators, 100% of Roma in all age groups complain about the lack of educational programs for adults (it is difficult for adults to finish their school education and to access further vocational training programs); numerous cases of discrimination (anti-Gypsyism) are registered in connection with employment attempts. There are no written complaints there about discrimination during the employment procedure due to the low literacy rate among Roma and the lack of effective anti-discrimination mechanisms.
47. The current lack of the state program for social integration of the Roma population (one comprehensive program or several sectorial programs) make it virtually impossible to ensure the rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, and to equal pay for equal work.
48. Presidential Decree #3 of 2 April 2015 (On Prevention of Social Parasitism) obliges citizens of Belarus, foreign citizens, and stateless persons who obtained a permanent residence permit in Belarus, to pay the fee to cover the government spending, unless they have participated in financing of the government spending for not less than 183 days within the tax period. The non-payment or partial payment of the fee entails a fine in the amount of two to four 'basic units' (reference amount used for tax calculations in Belarus-*TN*) or an administrative arrest. According to Decree #3, while serving an administrative arrest, the arrested will be involved in community service compulsorily. Thus, the Decree has virtually legalized forced labour, as the lack of employment for more than 183 days per year entails the obligation to pay the fee, and the failure to pay it can entail sanctions in the form of a fine (in addition to the fee) or an administrative arrest involving compulsory work.
49. This Decree applies to the majority of the Roma population. Roma women are particularly vulnerable, as they traditionally take care of children under seven and keep the house. The Decree obliges them to pay the fee, if they do not work and do not carry out other activities, equivalent to financing of the government spending. In case of their refusal or inability to pay it, they may be fined or arrested for up to 15 days and involved in labour compulsorily. Thus, the Decree has created an especially difficult situation for the Roma population. Although Decree #3 is not applied *de facto* and is now expected to be considerably amended, it has not been repealed yet and is still effective *de jure*.
50. In 2016, the Committee on the Elimination of All Forms of Discrimination against Women, in their Concluding Observations on Belarus' Eighth Periodic Report, expressed concern about the adoption of Presidential Decree #3 (On Prevention of Social Parasitism) in 2015. The Decree introduced the national fee, which is levied on unemployed persons to ensure their participation in financing of the government spending. This applies to non-working parents if they raise children over seven, which disproportionately affects women, since they are much oftener engaged in the upbringing of children and performing household duties. The Committee called

for immediate legislative amendments to ensure that the tax obligations imposed by Presidential Decree #3 (On Prevention of Social Parasitism) do not apply to non-working parents engaged in the upbringing of their children.<sup>9</sup>

## The right to education

51. Secondary and primary education covers about 80% of Roma children, but most of them complete only the basic school course. 12% of Roma aged 10 and older cannot read and write.<sup>10</sup> According to unofficial information provided by the Roma community mediators, in 2014 and in early 2015, about 55% of the Roma minors did not attend school. The main reasons for this situation include: a) the low motivation of the Roma children to attend school; b) the lack of control on the part of the parents; c) the lack of school clothes and school supplies due to the low income in the Roma families. The situation has improved considerably owing to the work of the Roma community mediators with the schools attended by the Roma children and with the families of the Roma minors, as well as to their effective communication with the Education Departments of the local public authorities. The main efforts were focused on the work with the Roma families in the village of Titovka (Leninsky District, Bobruisk). Basic school #15 located there is the only school in the country where the Roma children make up to 95% of all students (the total number of students is about 60). Owing to the joint work of the Roma activists and school administration, all children of school age attend school there. However, there is evidence there, that in other regions (e.g. in the village of Rusino, Baranovich district) only about 50% of children of school age attend school.
52. In 2016, the Committee on the Elimination of All Forms of Discrimination against Women, in their Concluding Observations on Belarus' Eighth Periodic Report, expressed concern about the adoption of Presidential Decree #3 (On Prevention of Social Parasitism) in 2015. The Decree introduced the national fee that is levied on unemployed persons to ensure their participation in financing of the government spending. This applies to non-working parents if they raise children over seven, which disproportionately affects women, since they are much oftener involved in the upbringing of children and performing household duties. The Committee called for immediate legislative amendments to ensure that the tax obligations imposed by Presidential Decree #3 (On Prevention of Social Parasitism) do not apply to non-working parents engaged in the upbringing of their children<sup>11</sup>.
53. In 2016, a smaller number of early marriages was recorded (we are talking about both officially registered and unregistered marriages). 24 early marriages were registered, which accounted for about 30% of the total number of the Roma marriages. There is a tendency there towards more "mature" marriages: the Roma families are most often started by young people aged 18-19.

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<sup>9</sup> CEDAW/C/BLR/CO/8

<sup>10</sup> See *Strategy for education, professional employment, social welfare and preservation of the cultural identity of the Belarusian Roma population as a condition for overcoming the social exclusion and discrimination. Analytical materials.* <http://romaintegration.by/wp-content/uploads/2014/12/18.pdf>

<sup>11</sup> Prevention of child, early and forced marriages among the Roma population of Belarus. Analytical report. [http://romaintegration.by/wp-content/uploads/2016/03/Roma\\_early\\_marriages.pdf](http://romaintegration.by/wp-content/uploads/2016/03/Roma_early_marriages.pdf)

54. The information campaign “Early Marriages - Missed Opportunities”, held as part of the work of the Roma community mediators, contributed to the reduction in the number of early marriages. The goal of the campaign was to inform the Roma population in Belarus about the negative social effects of early marriages, to promote the values of the rights of the child, and to provide opportunities for social development of the Roma youth, especially for girls. The information campaign targeted parents of girls under age, the Roma youth, leaders of the Roma communities, and teachers. This campaign was initiated and carried out exclusively by the Roma activists and without any involvement on the part of the public authorities. Without the continuous work on the prevention of early marriages and explaining the right to education in the Roma communities, the chances are low that the Roma children will be educated persons and well trained specialists.
55. According to Paragraph 177 of the State Report, the position of the State, with regard to ensuring the right of children to education, is primarily the use of punitive measures (penalties, sanctions) against the legal representatives of the child. Meanwhile, when it comes to the Roma population, it is necessary to adopt a comprehensive program for integration and for the promotion of the values of education.
56. No more than 2% of Roma have higher education. About 17% have secondary or vocational education.<sup>12</sup> The level of education vary depending on the age group: among Roma aged 25-35, 50% have only elementary education, about 50% have finished the basic school; almost 100% of men in this age group have finished the basic school; in the age group of 35-45, 40% of women and men have elementary education, 40% have finished the basic school; in the older age group (aged over 50), only a few have finished the basic school.<sup>13</sup>
57. The fact that many young Roma in their twenties have neither education, nor reading and writing skills, also raises particular concern. The lack of documents on secondary education or basic education is a serious obstacle for employment of the Roma women and men in all age groups. Thus, without targeted educational programs and activities aiming to achieve comprehensive social integration, the right to education of persons of the Roma ethnicity remains under threat.
58. The legislation of Belarus stipulates for the possibility to study in the minority language only when receiving the secondary education. Education and training in vocational schools and in specialized secondary and higher education institutions is carried out only in Russian and (or) Belarusian.

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<sup>12</sup> *See Strategy for education, professional employment, social welfare and preservation of the cultural identity of the Belarusian Roma population as a condition for overcoming the social exclusion and discrimination. Analytical materials.* <http://romaintegration.by/wp-content/uploads/2014/12/18.pdf>

<sup>13</sup> *Ibid.*

**Article 6. Effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination**

59. There is no case law in Belarus on criminal responsibility for racial discrimination. The Criminal Code views the motive of racial hatred as a reason for a crime as an aggravating factor; however, there is no information there on any cases when that rule would have been applied.
60. In 2014-2017, more cases of vandalism were registered at the memorable Jewish places: in July 2014, the monument to child victims of Orsha ghetto was desecrated (the monument was opened in July 2014); in October and December 2014, vandals desecrated the synagogue in Gomel with anti-Semitic graffiti; in July 2015, vandals smashed and overturned nineteen monuments at the Jewish cemetery in Borisov; in May 2016, vandals desecrated the memorial to 800 Jews killed in the June of 1942, located near the town of Ivenets; in July 2016, “The Pit” memorial in Minsk was desecrated; in November 2016, the stone monument “In Memory of Jews of Mogilev - Victims of Nazism” was desecrated; in November 2016, vandals desecrated the memorial to the victims of fascism in Pinsk.
61. Upon the investigation of the facts of vandalism in 2016, such actions were qualified as “hooliganism” and “desecration of historical and cultural values”, without revealing of anti-Semitism as a motive. The perpetrators were found only in one of the four cases. Thus, the protection, provided by the public institutions in cases of racial discrimination, is ineffective.
62. Paragraph 172 of the State Report refers to the Law on the Bar and Legal Practice in Belarus and declares the principles of independence of the Bar, the implementation of the right to legal assistance, and the inadmissibility of interference with lawyers’ professional activities. However, the same law and the relevant law enforcement practice indicate the direct interference on the part of the public agencies in lawyers’ work. The Ministry of Justice enjoys extensive powers to control lawyers’ work, to issue and terminate licenses to practice law, to initiate disciplinary proceedings against lawyers. The Bar associations need to agree the candidates for the Chair position with the Ministry, etc. The lack of independence of lawyers puts at risk the effective implementation of the right to the protection of every person, especially of representatives of vulnerable groups and foreigners.

**Article 7. Effective measures in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination**

63. We should note the certain efforts made by the Commissioner for Religious and Ethnic Affairs and the Ministry of Information of Belarus to prevent stereotypes in the media that may provoke racial discrimination.
64. The Institute of Journalism of the Belarusian State University (the BSU) regularly organizes a course on “Inter-cultural and Inter-religious relations in Belarus” for journalists of the national and regional media. However, the Faculty of Advanced Training and Retraining of the Institute of Journalism of the BSU did not include this course in their work plan on additional education for adults for the academic years of 2016-2017. The program of the course is also not available, so it is not known whether it covers the issues of identifying hate speech and the means to combat it.

65. One of the positive measures that should be noted is the national competition among journalists and the media for the best coverage of the issues of inter-ethnic and interfaith relations, intercultural dialogue in Belarus, and cooperation with compatriots abroad.
66. We should also note the youth campaign “Movement against Hatred”, implemented by the Council of Europe in cooperation with the Ministry of Education of Belarus.
67. It is a matter of concern that the media publish a considerable number of articles, which contain hate speech expressions in titles and texts and in comments on publications.<sup>14</sup> In 2015-2017, a tendency has emerged to reduce the number of hate speech wordings in headlines, but the amount of stereotypical language in comments has grown. This fact can be explained by the activity of NGOs and activists identifying hate speech and providing the relevant legal interpretation, which has increased significantly in this period. Many of the media have “audited” the current and archival publications, eliminating hate speech in the visible parts of publications (titles and leading paragraphs).
68. Although the public agencies implement the certain activities to combat racial prejudice, the fact that this work is carried out without public discussion and communication with the civil society, including representatives of the vulnerable groups that are most exposed to hate speech, raises concerns.
69. It is also worrisome that advanced training programs for civil servants, organized by the Civil Service Institute of the Academy of Public Administration under the aegis of the President of Belarus fail to include specialized programs (courses and other training modules) on the management of religious, cultural and national diversity and the issues of combating racial discrimination, including effective anti-discrimination legislation. There are no data there on the use of such programs at the Institute of Retraining and Advanced Training for Judges, Prosecutors, Court and Justice Institution Officials.

### **Information on the protection of the rights of foreigners, refugees and stateless persons**

70. Belarus ratified the UN Convention and Protocol Relating to the Status of Refugees in 1951 and in 1967 (2001) respectively. In 1993, Belarus signed and ratified the CIS Agreement on Assistance to Refugees and Internally Displaced Persons. The latter is not applied in practice. Belarus has not signed the International Convention on the Rights of Migrant Workers and therefore has no international obligations in this area. Since 3 July 2009, the Law on Granting Refugee Status, Additional and Temporary Protection to Foreign Citizens and Stateless Persons in Belarus has been effective.
71. The new version of the Law was adopted in July 2016. The amended Law makes it possible for foreigners, staying at the state border checkpoint and unable to cross the state border due to the absence of valid documents for the entry into Belarus, to apply for the protection. Previously, the Law provided only for the equal right to judicial protection with nationals for the

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<sup>14</sup>[http://rounasc.info/sites/default/files/u1/2\\_yazyk\\_vrazhdy\\_v\\_smi\\_kak\\_sredstvo\\_vozbuzhdeniya\\_nacionalnoy\\_rozni\\_2013.pdf](http://rounasc.info/sites/default/files/u1/2_yazyk_vrazhdy_v_smi_kak_sredstvo_vozbuzhdeniya_nacionalnoy_rozni_2013.pdf)

[http://rounasc.info/sites/default/files/u1/yazyk\\_vrazhdy\\_v\\_smi.pdf](http://rounasc.info/sites/default/files/u1/yazyk_vrazhdy_v_smi.pdf)

[http://rounasc.info/sites/default/files/u1/monitoring\\_proyavleniy\\_cyganofobii\\_v\\_smi\\_grodnenskogo\\_regiona.pdf](http://rounasc.info/sites/default/files/u1/monitoring_proyavleniy_cyganofobii_v_smi_grodnenskogo_regiona.pdf)

<http://romaintegration.by/wp-content/uploads/2016/11/monitoring.pdf>

foreigners, who apply for the protection. According to the new version, persons who have received the status of refugees, have the right to education, and refugees and persons who have been granted asylum have the same right to medical services as citizens of Belarus. The fact that the person is serving a sentence in the form of arrest or detention is no longer viewed as a reason for suspension of the consideration of applications for the protection. The exit of the foreigner from Belarus is considered an additional ground to terminate the consideration of the application for the protection.

72. Formally, any foreigner may declare their intention to apply for the protection either when crossing the State border of Belarus, or staying in the country. Upon the consideration of each application, the Department of Citizenship and Migration of the Ministry of Interior of Belarus takes a decision that may be contested in court. However, in practice, the customs officers will detain a foreigner who applies for the protection while crossing the border to clarify the circumstances.
73. Now, there are no special detention facilities in Belarus for detention of foreign citizens and stateless persons – they are detained in temporary detention facilities (in Minsk - in the Center for Isolation of Delinquents). These facilities are not designed for long-term detention. These persons receive information about neither the grounds for their detention, nor their rights and obligations: the officers of the Migration Service and detention facilities are not proficient enough in foreign languages and do not engage interpreters in order to timely explain their procedural rights to the detainees. Besides, the public authorities do not inform relatives of the detainees about their whereabouts. According to the detainees, the lack of information and the poor conditions are the main factors causing discomfort (no walks, poor ventilation in the cells, poor quality of food and poor sanitation).
74. There is no clear procedure in place for obtaining permission to visit the detainees, and, respectively, it is impossible to make an objective evaluation of the detention conditions.

*There is information there about the case of two stateless persons of the Syrian ethnicity that took place in 2014. First, they arrived to the Russian Federation, but were unable to apply for the refugee status because of the long queues. Therefore, they went to Minsk, to the Representative Office of the High Commissioner for Refugees. These persons were arrested after crossing the border and were placed to the temporary detention facility in Orsha, where they were detained for 2 months. During this time, officers of the Citizenship and Migration Department and the UNHCR came to them twice. It was only after the second attempt that the officers accepted their application for the status of refugees. One of the detainees spoke only Arabic and English. She reported that neither the border guards, nor the detention facility staff or the Citizenship and Migration Department officers explained to them the procedure and the rules of stay in Belarus and the rights and duties of foreign citizens. As a result, the Citizenship and Migration Department referred to the provision of the Minsk Convention, which states that “the decision about granting the refugee status should be issued by the first country of entry” (in that case, it was the Russian Federation) and refused to grant the refugee status, without denying the fact of the terrible war in Syria and the fact that the applicants were actually in danger. However, the Department considered that those persons had abused the absence of the actual Belarus-Russia border and had violated the visa regulations; therefore, they were detained until the application submission. In both*

*cases, the Department of Citizenship and Migration and the court found the abuse of the protection procedure.*

*In case the state refuses to provide the protection, there is a procedure in place for obtaining the refugee status from the UNHCR. For example, the family of M.K. from Afghanistan used that procedure and was granted the refugee status by the UNHCR. In this situation, Belarus cannot expel these people from the country, and the UNHCR office has to resettle them to a third country willing to accept the refugees. For now, this family has been waiting for resettlement for four years already. Employment is banned for the family members, they receive minimal support from the UNHCR.*

75. For now, there is no relevant information about the situation of migrants' rights in Belarus, neither from the relevant NGOs, nor from the government agencies. Representatives of the civil society organizations face the problem when trying to obtain complete statistical information about the number of applications. The official data available only informs about the number of those who were granted the refugee status and about their country of origin. When foreign nationals are detained at the state border of Belarus, the website of the State Border Committee of Belarus becomes the main source of information, but it publishes only the total numbers and general information. It is virtually impossible to obtain information about the detention, status and further fate of foreigners, especially those arrested by the MOI.
76. The specialized organizations that deal with refugees, consider the situations in the context of the compliance or incompliance with their mandate. The lack of public control and the secrecy of the procedures impeded the transparent coverage of the existing problems of human rights violations.
77. Paragraph 78 of the State Report states that the country observes the non-refoulement guarantees in case the life or freedom of the foreigner would be threatened because of their race, religion, nationality, belonging to a particular social group or sharing the certain political opinion, or in case they are at risk of being tortured. However, in practice, there are various situations there when foreign nationals are expelled or extradited to the countries where they are exposed to immediate danger, for example, Murad Amriev, Vladimir Egorov, Imran Salamov.

*Thus, for example, on 4 April 2017, Imran Salamov, a native of Chechnya, applied to the Assistance for Refugees Mission organised in Brest by the Human Constanta NGO. He said that he arrived in Brest on 21 March 2017 and prior to March 29 made eight trips to the Polish border crossing point "Terespol" to apply for asylum in Poland, but the Polish border guards would not let him do so. Imran also said that at home, within over 15 years, he had been repeatedly detained illegally and that during his detention he was tortured.*

*On April 13, the Belarusian authorities detained Imran during the border control procedure. As it turned out later, on April 6, the Russian Federation put him on the international wanted list on suspicion of the participation in an illegal armed group. Immediately after the detention, the decision was taken about the expulsion of Imran from Belarus. Imran believed that, in the event of his return home, the Chechen security officers would torture him; therefore, he applied for the international protection in Belarus. In accordance with the law, his application suspended the expulsion for the penalty period.*

*However, in late August, he was denied the protection in Belarus. After Imran was informed about the decision on the denial of the protection, he had 15 days to appeal the decision. According to the law, the expulsion was to be suspended for the pendency period. However, on 5 September 2017, Imran was forcibly deported to Russia.*

*After his expulsion from Belarus on September 5, he was taken to Grozny (Chechnya) as late as on September 11. On that day, Imran's relatives and lawyers were allowed to see him. As of 27 September 2017, the fate of Imran Salamov triggers concern. Since September 11, neither his relatives, nor his lawyer have been allowed to see him. They have no information about his condition and exact placement.*

## **RECOMMENDATIONS**

- 1) To develop and adopt a comprehensive anti-discrimination law, with the involvement of a wide range of stakeholders, including civil society representatives;
- 2) To establish a national human rights institution in accordance with the Paris Principles;
- 3) To avoid ethnic profiling of Roma and other ethnicities, including the arbitrary and illegal detention, fingerprinting, and temporary confiscation of vehicles; to conduct training sessions for law enforcement officers on how to establish effective communication with the Roma population, especially in the places of their density residence;
- 4) In light of Resolution 20/4 adopted by the UN Human Rights Council at the 20th session, to eradicate the practice of granting the status of stateless persons to persons of the Roma ethnicity and other ethnicities, who were born in Belarus, on formal grounds, and to provide full assistance to such persons in obtaining of the citizenship of Belarus with a view to the full-scale implementation of their rights;
- 5) To take measures to combat the practice of discriminatory denials to hire persons of the Roma ethnicity and other persons on racial grounds;
- 6) With the participation of the Roma minority, experts and representatives of the civil society, to develop a comprehensive program for social integration of the Roma population in Belarus, including measures to ensure the rights of the Roma children to education, the prevention of early marriages, educational programs for children and adults, the involvement of the Roma leaders in the crime prevention and law enforcement system;
- 7) To repeal Presidential Decree #3 dated 2 April 2015 (On Prevention of social Parasitism);
- 8) To conduct special training for judges, prosecutors, police officers, other legal professionals and civil servants in order to improve their competence in identifying and investigating hate crimes and issuing judicial decisions to ensure the equality and the protection against discrimination;
- 9) To ensure the implementation of educational programs for journalists and the media on the promotion of the principles of equality and non-discrimination;
- 10) To monitor the use of hate speech in the media and to take measures each time when the media use elements of hate speech;
- 11) To amend Regulation #200, dated 28 June 2010, of the Ministry of Interior, so that to provide for the possibility to take pictures for a passport in a headdress, unless it hides the shape of the face, for individuals who cannot appear hatless in public because of their religious beliefs;
- 12) To bring the legislation and law enforcement practice regulating the issues of the freedom of religion or belief in line with the relevant international law standards, and therefore:
  - to abolish compulsory registration for religious communities;

- to abolish the authorization procedure for religious activities held in the premises that are in legal possession of religious organizations;
  - to remove the legislative restrictions on the establishment of the media by various religious organizations;
  - to provide to foreign nationals, lawfully residing in Belarus, the possibility to implement fully the right to freedom of religion, without obtaining additional permits (to be founders and leaders of religious organizations, and to carry out their legitimate religious activities, including teaching in religious schools);
  - to exclude from the legislation the rules that limit activities of religious organizations to the territory specified in the statute;
- 13) To abolish the criminal liability for organizing of and participating in the activities of unregistered organizations (to remove Article 193-1 from the Criminal Code), and to abolish the ban on activities of unregistered civic associations;
  - 14) To ensure the humane and fair treatment of migrants, regardless of their immigration status, including the effective legal protection and, if necessary, the assistance of a competent interpreter, in accordance with the relevant international law and human rights standards, particularly during interrogations;
  - 15) To ensure that the law enforcement and immigration officers treat migrants with respect and without any discrimination, in accordance with the international standards, *inter alia* through organisation of specialized trainings for administrators, law enforcement officers, migration officials and other groups concerned;
  - 16) To ensure, in a timely manner, the procedural rights of detained foreign nationals with regard to their weakened legal status, and to guarantee their equal rights with citizens of Belarus; to pay special attention to the explanation of their rights, duties, the grounds for detention, the right to asylum, to the assistance of a lawyer, an interpreter and humanitarian assistance;
  - 17) To promote transparency in the work of migration services and other government agencies; to ensure the right for access to information for civil society organizations and individuals; to give possibility to provide assistance to such persons;
  - 18) To provide information on the whereabouts of detainees to their relatives or other persons associated with detainees' relatives;
  - 19) To create specialized centers for the detention of foreign nationals, with the sufficient conditions for detainees that will not demean their human dignity;
  - 20) To develop effective legal mechanisms and procedures for the protection of foreign nationals and stateless persons in case of their forced migration from the country of origin;
  - 21) To use arrest and detention of foreigners only as a last resort, applying these measures to some individuals on reasonable grounds and in accordance with the UNHCR "Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention". To provide for the opportunity for representatives of the relevant NGOs to visit detained foreign nationals and stateless persons.